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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/690,149	10/21/2003	Michael H. Mackin	OM136	3911

26009 7590 08/31/2007

ROGER M. RATHBUN
13 MARGARITA COURT
HILTON HEAD ISLAND, SC 29926

EXAMINER	
GILBERT, SAMUEL G	
ART UNIT	**PAPER NUMBER**
3735	

MAIL DATE	DELIVERY MODE
08/31/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/690,149	MACKIN ET AL.	
	Examiner	Art Unit	
	Samuel G. Gilbert	3735	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *05 June 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,2 and 4-21* is/are pending in the application.

4a) Of the above claim(s) *11-15* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,2,4-10,16-19 and 21* is/are rejected.

7)☒ Claim(s) *20* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1, 2, 4-9 and 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wilker (5,162,038) in view of Harry et al (2002/0099277).

Claim 1 - apparatus -10- is an infant warmer, element -11- is a base, element -12- is a platform, element -14- is a warmer (heater), element -20- is a sensor, and element -26- is a visual display. However Wilker transmits the detected information by a wired system not a wireless system. Harry et al teaches a sensor using wireless transmission of physiological properties of the patient, element -28- is a transmitter. Harry et al teach wired or wireless sensors may be used, paragraph [0029]. It would have been obvious to one of ordinary skill in the medical arts at the time the invention was made to us a wireless sensor as taught by Harry et al and the required transmission apparatus in place of the wired sensor of Wilker to provide benefits as follows. The use of wireless transmission eliminates wires that may become tangled and pull the sensor from the infant of endanger the health of the infant. Further, wireless systems allow for the use of disposable electrodes therefore providing the

benefit of eliminating transfer of germs from the infant currently using the device to the next infant to use the device.

Claim 2 - epatch -16- inherently includes an enclosure, as shown in figures 2a and 2b. It would have been obvious to one of ordinary skill in the medical arts at the time the invention was made to include the transmitter -28- in a housing as taught by Harry et al to provide a reusable electronic system, including a transmitter provided in a protective housing. The protective housing allows the electronics to be reused.

Claim 4 - element -20- is a temperature sensor.

Claims 5 and 6 - the sensor of Harry et al is configured and capable of detecting ECG and skin temperature. Sensing multiple physiological properties allows for a more defined picture of the condition of the infant it is old and well known in the medical arts to monitor a plurality of patient parameters. It would have been obvious to one of ordinary skill in the medical arts at the time the invention was made to provide an appropriately sized sensor for measuring multiple parameters as taught by Harry et al to provide additional information to the medical staff regarding the condition of the infant.

Claims 7-9 - element -26- is a visual display integrated/affixed to the infant apparatus.

Claim 16 - Wilker teaches a method of providing an infant warmer, element -26- provides a display, providing a sensor -20-, using the sensor to detect a physiological property, temperature, but transmits the detected information by a wired system not a wireless system. Harry et al teaches a sensor using wireless transmission of physiological properties of the patient. Harry et al teach wired or wireless sensors may

be used, paragraph [0029]. It would have been obvious to one of ordinary skill in the medical arts at the time the invention was made to us a wireless sensor as taught by Harry et al and the required transmission apparatus in place of the wired sensor of Wilker to provide benefits as follows. The use of wireless transmission eliminates wires that may become tangled and pull the sensor from the infant of endanger the health of the infant. Further, wireless systems allow for the use of disposable electrodes therefore providing the benefit of eliminating transfer of germs from the infant currently using the device to the next infant to use the device.

Claim 17 - the sensor of Harry et al is capable and adapted to detect ECG and skin temperature.

Claim 18 - Wilker uses the detected skin temperature to control the amount of heat emitted, column 5 lines 11-22.

Claims 19 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wilker 5,162,038 and Harry et al 2002/0099277 as applied to claims 1, 2, 4-9 and 16-18 above, and further in view of Koch et al (5,376,761).

The above combination teaches an infant warmer having a patient sensor, a wireless transmitter and a wireless receiver, but does not teach a scale to measure the weight of the patient. Koch et al 5,376,761 teaches an infant warming device including an infant scale -32-. It would have been obvious to one of ordinary skill in the medical arts at the time the invention was made to incorporate the concept of the infant scale as taught by Koch et al with the combination above to provide the beneficial capability of

weighing the infant to provide an indication of well-being and growth of the infant as taught by Koch et al., column 1 lines 22 and 23.

Claim 21 - when the transmitter 16 is connected to the sensors the examiner is considering the connection hard wired.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wilker 5,162,038 and Harry et al 2002/0099277 as applied to claim 1 above, and further in view of Petersen et al (6,616,606).

The combination teaches a device as claimed but does not teach a secondary transmitter for further transmitting the signals received from the transmitter to a remote receiver. Petersen et al teaches patient monitoring with a device local to the patient including a transmitter for transmitting the acquired information to a central monitoring station. It would have been obvious to one of ordinary skill in the medical arts at the time the invention was made to include the secondary transmitter as taught by Petersen et al with the device of Heflin Sr. to provide the ability of having a limited number of clinicians monitor all the patients as taught by Petersen et al.

Response to Arguments

Applicant's arguments with respect to claims 1-9 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's arguments filed 6/5/2007 have been fully considered but they are not persuasive.

Regarding the rejection of claims 16 and 19, the applicant argues that Wilker does not teach a wireless transmitter to send information to a visual display located on the apparatus. The examiner agrees that Wilker does not teach a wireless transmitter but believes element -26- is a visual display receiving signals from a wired transmission. Harry et al has been set forth to show wireless and wired transmission of sensed parameters is old and well known in the medical arts.

The applicant further argues no motivation or suggestion to combine Wilker and Harry et al in the references. It is the examiner's position that Harry et al sets forth that wired and wireless transmission may be used interchangeably, further, the examiner has set forth motivation clearly recognized by one of ordinary skill in the medical arts at the time the invention was made repeated here, "The use of wireless transmission eliminates wires that may become tangled and pull the sensor from the infant of endanger the health of the infant. Further, wireless systems allow for the use of disposable electrodes therefore providing the benefit of eliminating transfer of germs from the infant currently using the device to the next infant to use the device."

Allowable Subject Matter

Claim 20 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Samuel G. Gilbert whose telephone number is 571-272-4725. The examiner can normally be reached on Monday-Friday 6:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor II can be reached on 571-272-4730. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Samuel G. Gilbert
Primary Examiner
Art Unit 3735